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The Principles of Forming Collective Management of Copyright Rights

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Abstract

This scientific article analyzes the membership of rights holders in the organization, which is one of the important elements characterizing the organization of collective management. Also, a large number of cases of unlawful use of copyright works and unfair payment of copyrights to authors, the growing need to develop the institution of management of the author's property rights on a collective basis determine the prospects for revising existing agreements. The article focuses on some current issues related to the improvement of this institute, as well as the opinions of scientists from Uzbekistan and other countries.Proposals and recommendations of scientific and practical importance for the development of copyright were put forward.

Keywords: *copyright, to enforce copyright, royalty, copyright and related rights collective management, public performance or display of a work, objects of copyright and related rights, extended collective management*

INTRODUCTION

In recent years, extensive reforms have been implemented in Uzbekistan regarding the protection of copyright. In particular, changes in state administration in this direction, ensuring the rights and legal interests of creators and achieving fair payment of copyright, preventing unauthorized use of works, their appropriation, and strengthening appropriate measures of responsibility in relation to such cases, as well as protection of copyright and related rights on the Internet. indicates that the need to provide is growing.

Since the organization of collective management of rights is formed directly by the rights holders and acts within the framework of the powers received from them under the contract, it can be said that the activity of such an organization is based on membership [1, 119-123]. The Copyright Law of our country (Part 4 of Article 57 of the Law) defines the principles of relations between the organization of collective management of rights and users. If this organization is engaged in collecting the paid fee without concluding a contract, it must agree on the amount of such fee with the users (Part 4 of Article 57 of the Law).

In such cases or in other cases that may arise, the right holder reserves the right to receive a fair fee for the use of the copyrighted objects, and the organization may enter into agreements with users on the collection of fees without allowing the use of the above-mentioned objects.

Legal scientist A. Yuldashev defined the license agreement as follows: "License agreement is the provision by the owner of a literary, artistic and artistic work (licensor) of the right to use these works to another party (licensee) within the framework of the agreement" [2, 80]
Collective organizations must provide relevant information to the user/licensee (if possible, in electronic form). Such information includes:
1) explanation about the categories of right holders;
2) list of works in the society's repertoire and related rights;
3) information about tariffs;
4) validity period and conditions of the license and the procedure for invoicing;
5) details of license revocation conditions, notice provisions and periods for right of revocation [3]
These principles describe the key elements of the required information, as well as the actions to be taken in these situations.
This is especially true when collective organizations operating in a certain area compete with each other. Of course, it may not be realistic to expect collective organizations to make their databases of repositories public when mandatory or extended collective governance is used. These forms of collective governance do not facilitate the compilation and publication of an exhaustive list, but instead apply to all rights holders' works, even to rights that do not exist at the time of licensing. This is different from the situation where rights holders "opt out" (i.e. leave) an extended collective management system to exercise their rights individually. In this case, a "negative list", that is, a list of rights holders who have refused and, if possible, publication of their works may be required. International norms, national laws and codes of conduct contain the basic principles and criteria used in user licensing and tariff setting, i.e. at different levels of detail.
There are two generally applicable principles. They comply with competition rules and license conditions, and most importantly, ensure equal treatment between users. Article 16 (2) of the International Collective Organizations Directive clearly states that "Licensing conditions shall be based on objective and non-discriminatory criteria […]".
The Brazilian law states that "The license agreement must have the principles of efficiency and fairness and must not allow discrimination between users"[4, 547].
United States law makes nondiscrimination a fundamental requirement in licensing.
Collective organizations are restricted from entering, recognizing, exercising or claiming any rights that discriminate against license fees or terms under license agreements concluded between licensees [...][5, 30-33].
Article 56 of the legislation of our country also provides for these cases. The terms of the agreements must be the same for all users of the same category, determined by the type and size of the objects of works or similar rights used.
Codes of conduct of rights holders' federations are based on the same principle. In particular, non-discrimination means equal treatment between users of equivalent status (in particular, whether they are legal users or not):
According to the CISAC regulations, "Each member organization shall conduct its activities on the basis of the following conditions:
a) issuing licenses based on objective criteria;
b) the principle of non-discrimination among users".
According to the IFPI Code of Ethics, "In order to increase efficiency and reduce costs, copyright societies should also consider the possibility of cooperation with other societies representing complementary rights" [6, 236-242].
For some time, some countries and communities have applied the 10 percent rule of thumb, meaning that they require royalties to be 10 percent of their revenue (or, in some cases, costs). Article 60 (2) of the Swiss Copyright Act 1992 stipulates a fee of 10 percent for the use of all types

of copyright works and only 3 percent for related rights. It is based on the important criterion that "Compensation is determined by reasonable management to provide fair wages to rights holders" [7, 314].
However, technological changes and many new ways of doing business have appeared since this rule came into force. A single percentage-based licensing criteria is no longer appropriate for them. In a stable analog environment (regarding authors' fees for book publishing or vinyl phonograms containing a standard number of recorded songs), this type of rule would have made sense, as the new environment needed more flexibility. . Thus, it is more appropriate to emphasize the fairness of payment rather than the general percentage rule.
Before issuing a permit, the organization agrees with the right holder on the basic conditions for issuing a permit (license). In fact, the organization acts as an agent (intermediary) of the copyright owner. Therefore, there are not many organizations in the world that work in the "agent" (intermediary) version of collective management, because they have been replaced by successful agencies (organizations). INPI (France) is an example of such copyright organizations [8, 1320].
Organizations guarantee licensed activities. In this case: 1) allows the use of works that are not in the organization's repertoire (here we understand state control over the organization's activities); 2) the organization guarantees that it does not impose requirements on the user granted a blanket (comprehensive) license; 3) authors who have not transferred their rights to the society will not be in a position of discrimination when compared with other rights holders - members.
It is controversial to allow the existence of "blanket" (comprehensive) licenses with "extended" collective management of copyright within the framework of the concept of understanding subjective copyright as absolute, which dominates the literature.
Since the emergence of the institution of collective management in the world, many experts in the field of copyright emphasize that the absoluteness of subjective copyright is increasingly reduced to the granting of simple licenses.
In particular, legal scholar T. Striiter emphasizes the same point[]. This right is being replaced by the "principle of obligation". Collective rights management organizations turn the author's right to dispose of his intellectual property into a unique social benefit right, and the royalty, which was previously a condition of the market economy, into a simple tax levied on the activities of cultural market participants [9, 104].
According to some jurists, some copyright in public performance should arise only if the copyright owner removes his work from the organization's repertoire [10, 469].
The copyright model for the use of works in any form and in any way should retain its absolute character, regardless of when it becomes known to the public, because the author himself can decide how to use or prohibit the use of his work. will decide. It defines the uniqueness of the copyright owner's exclusive right to use the work.
A characteristic feature of the use of works that are sometimes "mass" (too many) is that they cannot always exercise their "monopoly" easily. However, their absoluteness should not be questioned [11, 303-313].
Licenses (license agreements) can also be classified according to the permitted uses (types of rights): public performance of the work, transmission of works by television (radio) or cable, mechanical recording of works and distribution of reproduced materials, reprographic viewing of works license agreements for reproduction and others [12, 121].
There are also the following types of licenses according to the order of issuance:
1) compulsory licenses;
2) licenses in accordance with legislation.

Compulsory license is a special permission issued by authorized bodies or organizations for collective management of rights in special cases of use of works under special conditions [13, 59-64].

According to the Berne Convention, national laws may introduce compulsory licenses for broadcasting works that do not affect the authors' moral rights and fair remuneration (Article 11 bis (2) and (3)). According to the above conditions, in accordance with the Berne Convention, a compulsory license may be introduced in special cases related to the reproduction (Article 9 (2)) and recording (Article 13 (1)) of musical works[14].

Compulsory licenses are issued only after a prior request for official permission to grant such a license or with prior notification of the author[15, 65-69].

A legal license is a legal permission to use works in a certain way and under certain terms of payment [16, 32-39]. In the legislation of some countries (in particular, Denmark, Sweden)[17, 75-78] for "extended collective license" (or "extended collective management"), if the collective management organization covers the interests of a large number of copyright holders in relation to works of a certain genre. in case of expressing and allowing the use of these works, special rules are provided. These rules provide that those users may use other works of the same category without permission if that organization has paid the same fees as other users for use of the works and has complied with other conditions.

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